



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** THE COMMISSION  
STAFF DIRECTOR  
GENERAL COUNSEL  
CHIEF COMMUNICATIONS OFFICER  
FEC PRESS OFFICE  
FEC PUBLIC DISCLOSURE

**FROM:** DEPUTY COMMISSION SECRETARY *D. H.*

**DATE:** July 21, 2010

**SUBJECT:** COMMENTS ON DRAFT AO 2010-09 (Club for Growth)  
and DRAFT AO 2010-11 (Commonsense Ten)

Transmitted herewith is a timely submitted comment from Allison Hayward, Vice President of Policy, Center for Competitive Politics, regarding the above-captioned matters.

**Attachment**



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July 21, 2010

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Federal Election Commission  
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Washington, DC 20463

Office of the General Counsel  
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Federal Election Commission  
999 E Street NW  
Washington, DC 20463

Via Fax: (202) 208-3333; (202) 219-3923

**Re: Comment on Advisory Opinions 2010-09 and 2010-11**

To the Members of the Commission:

On behalf of the Center for Competitive Politics, I would like to comment on the three draft advisory opinions before the Commission today, AO 2010-09 (Club for Growth), Alternative B of AO 2010-09 presented by Commissioner Walther, and AO 2010-11 (Commonsense Ten). The Center has been closely involved in many of the cases that provoke the need for new Commission advice. We believe we can offer useful insights to the Commission as it reassesses the scope and application of the Federal Election Campaign Act consistent with constitutional doctrine.

The Commission's 2010-11 draft is a reasonable accommodation of recent case law. It reflects the commonsense notion that if individuals, groups, corporations and labor organizations have a constitutional right to make independent expenditures advocating the election or defeat of candidates, they should also have the right to associate together to make expenditures. The group seeking advice stipulated that it would do so via a non-connected committee, and they are certainly entitled to choose that path. We caution the Commission, however, not to adopt a "gloss" on Advisory Opinion 2010-11 that erroneously concludes that—because Commonsense

Ten conceded political committee status—committee registration and reporting must be a necessary precondition to engaging in its stated activities. Independent expenditure reporting is perfectly tailored to provide information to regulators and the public about independent expenditures, see 11 C.F.R. 109.10(b). Perpetual political committee reporting is burdensome, cumulative, and unnecessary. Moreover, that question need not be explored to answer the questions before the Commission.

We also believe that the main draft AO 2010-09 is largely correct. Again, the Commission recognizes the right of individuals to associate together in making independent expenditures. Like Commonsense Ten, the Club for Growth's proposal includes the registration of this new independent expenditure group as a political committee, and again we note that this is their privilege, but should not be read into the interpretation as a requirement.

One element of the draft we find puzzling is the Commission's treatment of the Committee's administrative costs. The Commission asserts that the Committee "is not an SSF" which is a truism but not very helpful in light of court decisions. One issue the Commission will need to resolve in its future rulemakings is how many of the SSF restrictions survive, since they are based in large part upon statutory authority found unconstitutional in *Citizens United*. In the meantime, the Commission should not weigh in on the side of old doctrine. The SSF restrictions and requirements (that a connected organization can pay administration costs, but the SSF can only solicit a restricted class) make no sense in the context of a group that makes only independent expenditures. To treat administrative support as a contribution from the Club for Growth also alters a specification made by the requestor—that the Committee would take no contributions from corporations. Besides which, it is just wrong to equate administrative support with funds contributed to make independent expenditures.

We believe a stronger interpretation would treat Club funds spend on administrative support as exempt from the definitions of contribution and expenditure. Our approach adheres more closely to constitutional doctrine, by recognizing that there is no circumvention or corruption interest served in this context by treating administrative support as a contribution or expenditure.

Draft B of AO 2010-09 fails to take seriously recent court decisions. It elevates superficial distinctions between *SpeechNow.org* and the Club for Growth's proposal, and incorporates interpretive advice that is no longer valid, to justify a hyper-regulatory answer. In both situations, groups of individuals, each of whom have the right to make independent expenditures, desire to pool their resources to make independent expenditures. The Walther draft's justification for its answer is the mere fact that the Club for Growth is involved in the formation of the Committee, supports its administration, and also has a conventional PAC.

We fail to see how these factors make any difference. How the Walther draft can insist that the Club for Growth's proposal would require a "rulemaking" but that the Commonsense Ten group, which stipulates it will take support from individuals, groups, corporations and labor unions, would not, is hard to understand. It does not matter whether the independent expenditure group is associated in some way with a group that also has a PAC. The Commission has long approved the use of separated units within a larger organization—the independent expenditure

unit of a political party is just one example. Independent expenditures are simply not corrupting, so there is no anti-corruption interest or anti-circumvention rationale to support any second-order restrictions such as those proposed here.

Thank you for the opportunity to comment on Draft AO 2010-09, Draft B of 2010-09 and Draft AO 2010-11. We look forward to working with the Commission and staff as the interpretive process moves forward.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Allison Hayward". The signature is fluid and cursive, with a large loop at the end.

**Allison Hayward**  
*Vice President of Policy*  
*Center for Competitive Politics*